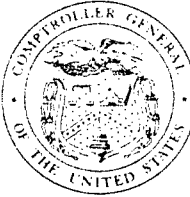


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## DECISION

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-201753

DATE: March 31, 1981

MATTER OF: John J. Moss

## DIGEST:

1. Protest that agency withheld information allegedly necessary to submit competitive proposals in response to two solicitations is denied where: (1) protester has not shown why information was necessary or that it was available to procuring activity by closing date; (2) agency received many offers which were submitted apparently without benefit of information; and (3) agency, in responding to request for information, would likely have taken longer than time allowed for submission of proposals given confidential character of some of information sought.
2. Protest against two solicitations alleging defects in RFP evaluation criteria and closing date for receipt of initial proposals is dismissed as untimely where such issues were first raised in comments on agency protest report. Alleged deficiencies were apparent in solicitations and had to be made subject of protest filed before closing date for receipt of initial proposals in order to be considered on merits.

John J. Moss protests under two requests for proposals (RFP) issued by the Department of Energy (DOE) on December 11, 1980. RFP No. DE-RP01-81AD-13518 called for proposals to perform certain support services related to preparation and prosecution of domestic patent applications, and RFP No. DE-RP01-81AD-13519 called for similar services, including

[Protests ~~Allegation~~ INVOLVING Two PROPOSALS]

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translation and records maintenance, in foreign countries.

Mr. Moss states that he requested of a DOE contract specialist certain information which he believed was necessary in order for him to submit competitive proposals prior to the January 12, 1981, closing date for receipt of initial proposals; however, the specialist informed him that the information would likely not be available until after the proposal due date. Mr. Moss is of the view that this information should have been released to him before the proposal due date. Based on our review of the record, this point of the protest is denied.

After receipt of DOE's report on his initial protest, Mr. Moss filed several new grounds for protest alleging deficiencies in the evaluation criteria contained in the RFP's and protesting that, even though the RFP's were not synopsized in the Commerce Business Daily until 6 days after the RFP's were issued, the closing date was not delayed by an equal length of time. These bases for protest are dismissed as untimely filed.

The protester alleges that, within a reasonable time after the solicitation announcements appeared in the Commerce Business Daily, he telephoned (apparently in late December 1980) a representative of the contracting activity and requested information which he believed was necessary to determine how best to propose. The information requested by Mr. Moss concerned existing and prior awards for similar services, including, but not limited to, the names of awardees and other offerors, their addresses, their offered prices, the involved contract specifications, and copies of the offers, omitting confidential information, if any. Mr. Moss also requested DOE records regarding the "volume, scheduling, subject matter, language-direction, and punctuality and acceptability of the work processed" under prior contracts for these services. The contract specialist allegedly informed Mr. Moss that the requested information would have to be supplied through DOE's Freedom of Information office, that the Freedom of Information office would likely not be able to furnish the information by the proposal due date, and that the

request, therefore, would not be able to be complied with. Mr. Moss has made it clear that he is not protesting solicitation deficiencies, but only that the contracting activity should have given him the information requested before the proposal due date so that he could make informed offers.

Regarding this basis of protest, the DOE reported to our Office on February 17, 1981, that Mr. Moss never made a formal request for the information from the DOE's procurement office or under the Freedom of Information Act. Mr. Moss responded to this statement by pointing out that the agency contract specialist had discouraged him from making a formal request by pointing out that a request would be futile under the circumstances. In any event, DOE's position is that the information requested by Mr. Moss is not necessary in order to respond to either solicitation. Moreover, the DOE notes that it received 31 timely proposals in response to RFP No. DE-RP01-81AD-13518 (domestic patent applications) and 16 timely proposals in response to RFP No. DE-RP01-81AD-13519 (foreign patent applications).

A solicitation must contain sufficient information to allow offerors to compete intelligently and on equal terms. Telephonics Corporation, B-194110, January 9, 1980, 80-1 CPD 25. However, the protester has failed to show why an informed offer could not have been made in response to either solicitation without the requested information. Since the protester has the burden of affirmatively proving its case (Macro Systems, Inc., B-196274, April 25, 1980, 80-1 CPD 299), we conclude that Mr. Moss has not met his burden. In this regard, the protester must show not only that the information was necessary, but also that the information was available to the procuring agency. See Telephonics Corporation, supra. Mr. Moss has not shown that the requested information was necessary or that it was available to the procuring activity by the closing date for receipt of proposals. Further, Mr. Moss' request was very broad and acknowledged that the requested materials would have to be screened for the presence of confidential information; therefore, it

seems likely, as contended by DOE, that it would have taken longer than the time allowed for submission of offers to gather the information, screen it, and transmit the nonconfidential remainder to Mr. Moss even if he had made a timely formal request therefor. Moreover, the date set for receipt of proposals is a matter of judgment vested in the contracting agency, and we cannot conclude that the January 12 closing date was arbitrarily or capriciously selected or that the date unduly restricted competition, especially in view of DOE's receipt of a large number of offers which were submitted apparently without the benefit of this information. See 50 Comp. Gen. 565 (1971). In these circumstances, we must deny this element of the protest.

The remaining protest issues, concerning the evaluation criteria and closing date, were raised by Mr. Moss in his comments on the DOE protest report. These comments were filed in our Office on March 6, 1981. We will not consider these issues on their merits because they concern alleged deficiencies which were apparent in the solicitations; therefore, this part of the protest should have been filed before the closing date for receipt of initial proposals in accord with section 20.2(b)(1) of our Bid Protest Procedures. 4 C.F.R. part 20 (1980). Where, as here, a protester initially files a timely protest and later supplements it with new and independent protest grounds, the later-raised bases must independently satisfy our timeliness requirements. James G. Biddle Company, B-196394, February 13, 1980, 80-1 CPD 129.

The protest is denied in part and dismissed in part.



Acting Comptroller General  
of the United States